

EXHIBIT B

DANIEL P. CASWELL 30(b)(6), Confidential
COOPER INDUSTRIES vs. CONTINENTAL CASUALTY

February 21, 2014

1

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF TEXAS

3 HOUSTON DIVISION

4 COOPER INDUSTRIES, LLC,)

5 600 Travis Street, Suite 5600,)

6 Houston, TX 77002,)

7 Plaintiff,)

8 vs.) CIVIL ACTION

9 CONTINENTAL CASUALTY COMPANY;) No. 4:13-cv-00575

10 TRANSPORTATION INSURANCE)

11 COMPANY; and THE CONTINENTAL)

12 INSURANCE COMPANY, as)

13 successor-in-interest to Harbor)

14 Insurance Company and successor)

15 by merger to Fidelity &)

16 Casualty Company of New York,)

17 Defendants.)

18 THE CONFIDENTIAL 30 (b) (6) DEPOSITION

19 OF CONTINENTAL CASUALTY COMPANY, TRANSPORTATION

20 INSURANCE COMPANY, and THE CONTINENTAL INSURANCE

21 COMPANY

22 by

23 DANIEL P. CASWELL

24 February 21, 2014, 9:02 a.m.

1 Q. Okay. Tell me what your understanding
2 is because you mentioned you had a conversation
3 with Mr. Fogle where you talked about '79 and '80
4 policies.

5 A. Right. That was what Mr. Fogle was
6 mentioning, so his understanding was that '79 and
7 '80 were open. There are a group of policies
8 that I believe go from '71 through '75 that have
9 retrospective premiums that have not been maxed
10 out. And to the extent that there are claims and
11 payments sought under those policies, the
12 retrospective premiums would apply.

13 Q. Okay. What about the '75 to '79
14 policies?

15 A. The '75 policy was a Fidelity &
16 Casualty policy. And I'm not aware of any
17 retrospective premium on that, although there may
18 very well have been, given the nature of Cooper's
19 program. I'm just not aware of it.

20 The policies between '76 and '79, my
21 understanding is that the retrospective premiums
22 have been maxed out on those policies, and
23 therefore, we no longer have retrospective
24 premiums that would apply to claims.

1 claim that's still within the open retro, if the
2 retro plan is not closed, he submits a claim --

3 A. Right.

4 Q. -- CNA defends the claim, pays the
5 indemnity on the claim, it puts both of those
6 dollars through the retro calculation, multiplies
7 both of them by the tax multiplier and the loss
8 conversion factor, charges back the
9 policyholder.

10 A. Correct.

11 Q. And that goes into the calculation of
12 toward the max premium?

13 A. Correct.

14 Q. So those defense costs are not subject
15 to a cap, a per occurrence cap, they are subject
16 to the retro cap?

17 A. They are subject to the retro maximum.

18 Q. The maximum. I'm sorry. I keep
19 calling it a cap. You keep calling it a max.

20 A. That's okay. I'm just trying to be
21 consistent with the terms that the retro people
22 use.

23 Q. No. That's fine. So, for instance,
24 if CNA were paying defense on asbestos claims for

1 Cooper, it would then -- your understanding if
2 the retro period were still open, charge Cooper
3 back and then apply those payments toward
4 reaching the retrospective premium max?

5 A. That's my understanding.

6 MR. GINSBERG: Let me just put on the record
7 that we would request that CNA provide us with a
8 Plan D retro of the time period that is referred
9 to in these documents.

10 MR. CAMERON: I'm happy to search our
11 client's records to see if we can find a Plan D
12 if it has not already been produced and to
13 produce it.

14 MR. GINSBERG: If it has been produced, just
15 tell us the number.

16 MR. CAMERON: I'm actually trying to figure
17 that out right now.

18 (WHEREUPON, a certain document
19 was marked Exhibit No. 5, for
20 identification, as of 2/21/14.)

21 BY MR. GINSBERG:

22 Q. Mr. Caswell, before we look at that
23 document, I just want to go back for one second
24 to Exhibit 1.

1 Q. You said that Cooper could have
2 invalidated its coverage by not paying
3 retrospective premiums, but just to be clear
4 because we're on the record here, CNA hasn't
5 submitted a retrospective premium bill to Cooper
6 which Cooper hasn't paid, to the best of your
7 knowledge, is that right?

8 A. I don't know of a bill that CNA
9 submitted for retros that Cooper has not paid.

10 Q. So there is no breach of a retro
11 obligation as we sit here today?

12 A. Well, that depends.

13 Q. What does it depend on?

14 A. The retrospective premiums are
15 something that Cooper is obligated to pay under
16 the policies. When they take the position that
17 they don't want to pay those retrospective
18 premiums, that's a premium. The fact that it's
19 paid after the fact doesn't change the fact that
20 it's a premium, and so if Cooper is telling us
21 now something different than I understood, I'd be
22 happy to hear that.

23 Q. But there is lots of if's in that.
24 What I'm asking is whether there is -- in fact,

1 you know of a situation in which CNA has
2 submitted a retrospective premium to Cooper for
3 payment, and Cooper has refused to pay it.

4 A. Right. And I answered that question.
5 And I said I don't know of a retrospective
6 billing that has gone to Cooper that Cooper has
7 refused to pay.

8 Q. And if Cooper says, Look, CNA, we have
9 the right under Texas law to pick which policies
10 we want to assign claims to, and we prefer not to
11 assign claims that have -- policies that have
12 open retrospective premiums, is that a breach of
13 any policy?

14 A. We would dispute that.

15 Q. But is it a breach of any policy?

16 A. I'm not sure. It strikes me as a
17 dispute.

18 Q. Okay. I'm just trying to get to what
19 your position is going to be at trial that Cooper
20 has voided its coverage because of its -- by
21 Mr. Fogle, for instance, saying as you've
22 testified, that he'd prefer not to assign any of
23 the claims to the '79 and '80 policies because
24 they have open retros.